

instrumentation taps that provide said averaged total and static pressures to a differential pressure flow indicators and/or transmitting devices; and

isolation valves used to isolate a single gas flow sensing element module from said pressure averaging piping, thus providing modular total and static pressures to a differential pressure flow indicators [and/]or transmitting devices.

Terminal Disclaimer

Applicant hereby disclaims the terminal part of any patent granted on the present application that would extend beyond the expiration of U.S. Patent No. 5,736,651, and hereby agrees that any patent so granted on the present application shall be enforceable only for and during such period that the legal title to said patent shall be the same as the legal title to U.S. Patent No. 5,736,651.

REMARKS

Reconsideration of the application as amended is respectfully requested.

Claims 1-4 were rejected under 35 USC 102(b) as being anticipated by Brandt.

In undertaking to determine whether one reference anticipates another under 35 U.S.C. 102(b), a primary tenet is that only the CLAIMED designs are to be compared. Many differences exist between the design claimed in Brandt, and the currently claimed design. The present invention includes a number of features that are unanticipated in the above mentioned

references, including:

- a total pressure sensing Pitot tube array affixed within the housing traversing the interior cross sectional area of said flow sensing element module for sensing the total pressure of fluid flowing into said flow sensing element module;
- a static pressure sensing Pitot tube affixed within said housing for sensing the static pressure within said flow sensing element module;
- exterior instrument taps for transmitting a flow rate signal;
- a total pressure manifold;
- a plurality of linearly elongated Pitot tubes having a first end and a second end in fluid communication with and anchored at said second end to said total pressure manifold; and
- a plurality of sensing ports penetrating each said Pitot tube and directed to face directly toward said inlet, thereby providing free fluid communication between the impacting fluid flowing into said flow element module through the Pitot tube and said total pressure manifold.

Further, the present invention utilizes high-temperature tubing connections. These are features undisclosed and unanticipated in the art.

Accordingly, the rejection by the examiner under 35 U.S.C. 102(b) is inappropriate.

The examiner respectfully rejected Claim 5-10 under 35 U.S.C. 103(a) as being

unpatentable over Brandt. Based upon the above arguments, it is felt that the differences between the present invention and all of these references are such that rejection based upon 35 U.S.C. 103, in addition to any other art, relevant or not, is also inappropriate. However, by way of additional argument application wishes to point out that it is well established at law that for a proper *prima facie* rejection of a claimed invention based upon obviousness under 35 U.S.C. 103, the cited references must teach every element of the claimed invention. Further, if a combination is cited in support of a rejection, there must be some affirmative teaching in the prior art to make the proposed combination. See Orthopedic Equipment Company, Inc. et al. v. United States, 217 USPQ 193, 199 (Fed. Cir. 1983), wherein the Federal Circuit decreed, "Monday Morning Quarter Backing is quite improper when resolving the question of obviousness." Also, when determining the scope of teaching of a prior art reference, the Federal Circuit has declared:

"[t]he mere fact that the prior art could be so modified should not have made the modification obvious unless the prior art suggested the desirability of the modification." (Emphasis added). In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

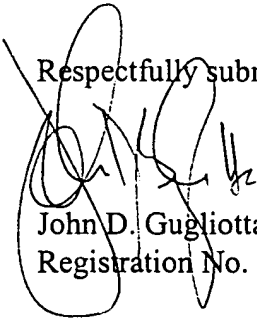
There is no suggestion as to the desirability of any modification of the references to describe the present invention. An analysis of the disclosures within the cited references fails to cite every element of the claimed invention. When the prior art references require a selective combination to render obvious a subsequent claimed invention, there must be some reason for the selected combination other than the hindsight obtained from the claimed invention itself.

Interconnect Planning Corp v. Feil, 774 F.2d 1132, 227 USPQ 543 (CAFC 1985). The examiner seems to suggest that it would be obvious for one of ordinary skill to attempt to produce the currently disclosed invention. However, there must be a reason or suggestion in the art for selecting the design, other than the knowledge learned from the present disclosure. In re Dow Chemical Co., 837 F.2d 469, 5 USPQ.2d 1529 (CAFC 1988); see also In re O'Farrell, 853 F.2d 894, 7 USPQ 2d 1673 (CAFC 1988).

To summarize, it appears that only in hindsight does it appear obvious to one of ordinary skill in the pertinent art to combine the present claimed and disclosed combination of elements. To reject the present application as a combination of old elements leads to an improper analysis of the claimed invention by its parts, and instead of by its whole as required by statute. Custom Accessories Inc. v. Jeffery-Allan Industries, Inc., 807 F.2d 955, 1 USPQ 2d 1197 (CAFC 1986); In re Wright, 848 F.2d 1216, 6 USPQ 2d 1959 (CAFC 1988).

Therefore, in view of foregoing amendments and clarifications, the applicant submits that allowance of the present application and all remaining claims, as amended, is in order and is requested.

Respectfully submitted,


John D. Gugliotta, P.E., Esq.
Registration No. 36,538

The Law Offices of John D. Gugliotta
202 Delaware Building
137 South Main Street